IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8016 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJITSINH AMIRSINH RAJ - Petitioner(s)
Versus
SENIOR DIVISIONAL MANAGER L I C OF INDIA & 2 - Respondent(s)

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Appearance :
MR CN TRIVEDI for Petitioner(s) : 1,
MR AK CLERK for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner – LIC agent has challenged the legality and validity of the order passed by the Senior Divisional Manager, Life Insurance Corporation dated 16-7-2001 terminating the agency of the petitioner with forfeiture of renewal commission as confirmed by the Zonal Officer, LIC by its order dated 19-3-2002 as well the order passed by the Chairman of LIC dated 12-5-2003.

2. The petitioner was working as a full time Agent of LIC since February, 1985. It is the contention of the petitioner that he was working as an Agent at Ankleshwar (GIDC) Branch under Vadodara Divisional Office and was working under the organization of Development Officer Shri V.D. Kharachia. It is also his case that he underwent successfully the training from 16-8-1994 to 19-8-1994 at Sales Training Centre, Ahmedabad. It is the contention of the petitioner that at the time when the petitioner applied for agency, in the agency application submitted by him on 28-2-1985 in good faith it was not disclosed that the petitioner is the brother-in-law of the Development Officer Shri Kharachia as there was no blood relation. It appears from the record that by communication/order dated 4th September, 1998, the

petitioner was informed by Senior Divisional Manager with regard to termination of his agency with forfeiture of renewal commission and all other benefits and the said order came to be passed in exercise of powers vested under Regulation 16(d) of LIC of India (Agents) Regulation, 1972. In the said communication, it is mentioned that it has been brought to their notice that while applying for agency on 28-2-1985, the petitioner did not disclose his relation with Shri V.D. Kharachia and deliberately suppressed the fact about his relation with him and that Shri Kharachia vide his letter dated 12-8-1997 confirmed that the petitioner is his brother-in-law i.e. wife's brother and the agency was granted to the petitioner on the basis of incorrect information given by the petitioner in agency application and as such the petitioner has violated the provisions of the LIC of India (Agents) Regulation, 1972. It appears that being aggrieved by and dissatisfied with the same, the petitioner preferred appeal before the Zonal Manager, LIC contending *inter alia* that as there was no blood relation with Shri V.D. Kharachia – Development Officer due to wrong interpretation of word “in relationship” the said factor was mentioned in the application and having realized the mistake, he has discontinued canvassing of LIC's new business and has even not renewed the agency

license and as a result of which, his agency stood terminated from March, 1997 itself. It is also further submitted that prior to the aforesaid communication / order dated 4th September, 1998 no opportunity has been given and it was requested to release renewal commission. It appears from the record that by communication dated 15-4-1999, the appeal submitted by the petitioner for release of renewal commission came to be rejected. It appears that no reasons have been assigned by the appellate authority while rejecting the appeal, which is statutory in nature. It also appears from the record that being aggrieved by the aforesaid order in rejecting the appeal and the original order, the petitioner preferred further appeal before the Chairman, LIC of India and considering the fact that the order dated 4-9-1998 was passed without following procedure as per the (Agents) Regulations, 1972 and since reasonable opportunity was not provided, the Chairman by its order dated 3-2-2001 remanding the matter to the first authority i.e. the Senior Divisional Manager. That thereafter, a show cause notice came to be issued upon the petitioner on 27-4-2001 proposing to impose a penalty of termination of the agency of the petitioner with forfeiture of renewal commission for committing fraud on the corporation in terms of Regulation 16(b), 16(d) and 19(1) of the LIC of

India (Agents) Regulations, 1972. It appears that the petitioner submitted a reply dated 15-5-2001 and considering the same, the Senior Divisional Manager passed an order terminating the license of the petitioner with forfeiture of renewal commission in terms of Regulation 16(b), 16(d) and 19(1) of the LIC of India (Agents) Regulations, 1972. The said order came to be passed on 16-7-2001. That being aggrieved by and dissatisfied the order dated 16-7-2001, the petitioner preferred appeal before the Zonal Manager, LIC which came to be dismissed vide order dated 19-3-2002 against which the petitioner preferred further appeal before the Chairman, which also came to be dismissed by order dated 12-5-2003. Being aggrieved by and dissatisfied with the aforesaid three orders terminating the agency of the petitioner with forfeiture of renewal commission and all other benefits, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Trivedi, learned advocate appearing on behalf of the petitioner has vehemently submitted that the order passed by the appellate authority i.e. the Chairman, dated 12-5-2003 dismissing the said appeal and confirming the order passed by both the authorities below

terminating the agency with forfeiture of renewal commission is *ex-facie* illegal and against the provision of natural justice as the said authority has considered the documents and/or other things which were not part of either the show cause notice and/or the basis of the order passed by the Senior Divisional Manager and/or Zonal Manager. So far as the order passed by the first authority i.e. first disciplinary authority i.e. the order passed by the Senior Divisional Manager dated 16-7-2001 is concerned, Shri Trivedi has submitted that the impugned order is a non speaking and non reasoned order and the same is required to be quashed and set aside. He has further submitted that no reasons have been assigned by the Senior Divisional Manager in not accepting the submission made on behalf of the petitioner. He has further submitted that as such there is no suppression on the part of the petitioner and/or the petitioner has not mislead and/or made any false statement. It is also further submitted that non-disclosure of the fact that his brother-in-law was serving in the LIC, cannot be said to be fatal and in fact the same was only a technical one and by which it cannot be said that by the aforesaid act, the petitioner has in any manner acted prejudicial to the interest of corporation for which such harsh punishment of terminating agency with forfeiture of renewal

commission is required to be passed that too after a period of 15 years of the agency and during the aforesaid period of 15 years of agency, nothing adverse has been found against the petitioner and there is no complaint against the petitioner. He has also further submitted that as so observed by even the Appellate Authority that there is no such ban in the (Agents) Regulations, 1972, by which a person cannot be the agent if his/her relative is in employment of the LIC and in spite of that the impugned order has been passed which requires to be quashed and set aside. It is further submitted that the petitioner has not caused any financial loss to the corporation. It is also further submitted by him that as there was nothing on record and in the application by which it can be said that the averments contained in the agency application submitted by the petitioner was found to be untrue and therefore, the case of the petitioner would not fall under any of the grounds set out in Regulation 16 of the Regulations, 1972. It is also further submitted that Regulation 5 of the aforesaid Regulations describes qualification of agents and in which also nothing has been provided that if any relative is in employment of the LIC, that person cannot become the agent. It is also further submitted by him that considering the Regulation 29 read with Regulation 25 of

the (staff) Regulations, 1960, there is no such ban by which the petitioner could not have become the agent of the LIC as the brother-in-law of the petitioner was in employment of the LIC. He has also further submitted that the Chairman – Appellate Authority has relied upon one circular dated 22-1-76 and according to him such circular cannot override the statutory provisions and the Regulations of 1972, more particularly, when the petitioner was not made aware of the internal circular dated 22-1-76 regarding banning of agency to terminate all staff members of the LIC. Lastly, the learned advocate appearing on behalf of the petitioner has submitted that the petitioner was having the agency of the LIC since last 15 years and has acted honestly and got maximum business and there is no loss caused to the LIC and there is no complaint whatsoever against the petitioner to terminate the agency after 15 years and that too with forfeiture of the renewal commission of 15 years and therefore, the action of the respondents is too harsh and disproportionate to the charge levelled against him. It is also further submitted that even all the three authorities below have not considered the fact that it is the case of the petitioner that the petitioner did not renew his agency license and as a result of which, the agency stood terminated from March, 1997 itself and still

the agency came to be terminated that too with forfeiture of the renewal commission and therefore, it is requested to allow the present application.

4. *Per contra*, Shri AK Clerk, learned advocate appearing on behalf of the LIC while opposing the present Special Civil Application relied upon the affidavit-in-reply and has submitted that the petitioner while applying for getting the agency of the corporation, deliberately did not disclose the fact that his brother-in-law was in service of the corporation and was working as a Development Officer and had willingly and deliberately suppressed the said fact, knowing fully well that since he was related to an employee of the corporation, he was not eligible to get an agency of the corporation and therefore, the petitioner is not entitled to any equitable relief in a petition under Article 226 of the Constitution of India. He has further submitted that considering the factum of not disclosing the fact that his brother-in-law was in service of the corporation, has not been mentioned in the application for getting agency and the said fact has not been denied by the petitioner and thereafter considering the allegations levelled in the charge sheet -cum- show cause notice and after giving an opportunity of being heard to

the petitioner, the disciplinary authority has passed an order to terminate the agency with forfeiture of the renewal commission, which is just and proper in the facts and circumstances of the case. He has also further submitted that the circular dated 22-1-76 regarding banning of the agency to the relatives of the staff members of the LIC dated 22-1-76 is in aid of the Regulations and not contrary to any of the statutory Regulations and the same has rightly been considered by the authority. He has also further submitted that even the said circular has not been challenged by the petitioner. He has relied upon the judgments of the Hon'ble Supreme Court in the case of Union of India and Ors. V. Narain Singh reported in 2002(5) SCC page 11, in the case of Divisional Controller, KSRTC (NWKRTC) V. A.T. Mane reported in 2005(3) SCC page 254 and in the case of Regional Manager, Rajasthan State Road Transport Corporation V. Sohanlal reported in 2004(8) SCC page 218, in support of his submission. Shri Clerk has submitted that once the charges are proved and unless the punishment is found to be shockingly disproportionate, the court should not interfere with the order of punishment / penalty. He has also further submitted that all the three authorities below have concurrently taken a view to cancel the agency with forfeiture of the renewal

commission and as there is no illegality in the order passed by all the three authorities below, it is requested to dismiss the present Special Civil Application. He has also further submitted that considering the fact that the petitioner has suppressed the material fact deliberately, the authority has taken a view not to continue with the agency as the authority is of the opinion that such a person, who is guilty of deliberate suppression, his agency is not required to be continued and therefore it is requested to dismiss the present Special Civil Application.

5. Heard learned advocates appearing on behalf of the parties.

6. It is not in dispute that the petitioner was working as an Agent of LIC since 1985. It is also not in dispute that after a period of 15 years of agency, the petitioner was served with a chargesheet-cum-show cause notice dated 27-4-2001 by the Senior Divisional Manager, LIC, Ahmedabad alleging *inter alia* that while taking insurance agency on 28-2-1985, the fact that the brother-in-law of the petitioner who was working in the LIC was not brought to the notice of the company and the said fact was not disclosed and by not disclosing his relationship with

said Shri Kharachia, the petitioner has committed serious act/lapse and it was alleged that by the aforesaid Act, the petitioner has acted in a manner prejudicial to the interest of the corporation. It is the contention on behalf of the petitioner that the petitioner was not informed and/or made aware about the Agents Manual, 1972. It is required to be noted that as such there is no such ban in the Agents Regulations, 1972 by which there is a ban of granting agency to the relatives of the staff members. However, such a ban is provided vide circular dated 22-1-76. Nothing is on record to show that such a circular was brought to the notice of the petitioner. One can appreciate that such a ban is provided in the regulations and the petitioner pleads ignorance. However, as stated above such a ban is vide internal circular and therefore, it can be presumed that the petitioner might not be aware of the said circular. It appears that it is the contention on behalf of the respondents that in the form, there was a specific clause by which the applicant was required to mention whether any relative is the staff member of LIC or not and by not mentioning anything to the effect that his brother-in-law is in service of LIC, it is alleged that the petitioner has committed fraud and/or has concealed the fact. It is the contention on behalf of the petitioner that there is no mis-

representation on the part of the petitioner as the petitioner has not stated that no relative of the petitioner is in service of the LIC. According to the petitioner, by not mentioning anything, it cannot be said to be either making a false statement or mis-representing the fact. It is required to be noted that during the 15 years of the agency, nothing adverse has been found against the petitioner. Therefore, the only thing which is required to be considered by this court is whether by not disclosing that his brother-in-law is serving in the LIC, in the form at the time of making an application for agency, whether the petitioner has acted against the interest of the LIC and/or for such an Act, the punishment of termination of the agency with forfeiture of the renewal commission (of 20 years) is justified.

7. It appears from the record that the impugned decision has been taken considering the Regulation 16(1) (b) and (d) of the LIC of India (Agents) Rules, 1972 which provides that the competent authority may terminate the agency if an agent acts in a manner prejudicial to the interest of the corporation or to the interest of its policy holders and if it is found that any averment contained in his agency application or in any report furnished by him as an agent in respect of any proposal

is not true. As per rule 19, which provides for payment of commission on discontinuation of agency and in the event of termination of the appointment of an agent, except for fraud, the commission on the premium received in respect of the business secured by him shall be paid to him. Rule 5 of the (Agents) Regulations, 1972 provides for qualification of the agent and the rule does not provide any such ban by which a person cannot be appointed as an agent if his or her relative is a staff member of the LIC. As stated above only by circular, such ban is provided. By not mentioning in the application that his brother-in-law was a staff member of the LIC that by itself, it cannot be said that the petitioner has acted in a manner prejudicial to the interest of the corporation or to the interest of the policy holders. It is the contention on behalf of the petitioner that the circular dated 22-1-76, providing such a ban cannot override the statutory provisions and the regulations of 1972 and the same is not binding, is concerned, the same cannot be accepted as even the circular so long, as the same is in existence cannot be ignored and Shri Clerk, learned advocate appearing on behalf of the LIC is right in his submission that such a circular is in aid to the regulation and is not in any way conflicted with the Agents Regulations of 1972.

8. However, what is required to be considered by this court is whether the act of the petitioner and/or non-disclosure of the fact that his brother-in-law was in service of the LIC in the application for agency is so grave which warrants not only termination of agency but forfeiture of renewal commission also. Shri Clerk has submitted that so far as the agency is concerned, it is based upon a mutual trust between the company and the agents and in such set of circumstances, the corporation has thought it fit not to continue with the agency and has decided to terminate the agency of the petitioner as LIC agent. To that extent, the action of the respondent – corporation in terminating the agency on the aforesaid ground cannot be said to be in any way illegal and/or arbitrary. Considering the fact that the petitioner has not disclosed the correct fact while obtaining agency and thereafter having come to know, the LIC has formed an opinion and has lost confidence in the petitioner and has accordingly terminated the agency, it cannot be said that such an action is in any way illegal or arbitrary. Court cannot direct the LIC to continue with the agency in spite of the fact that the LIC has found that there is a loss of confidence in the petitioner. However, in the facts and circumstances of the case, more particularly,

when the agent was prescribed only by circular and that such a ban is not provided in any statutory regulations or rules, it might be possible that the petitioner might not be aware of such a ban. It is required to be noted that a show cause notice came to be issued after a period of 15 years of agency and nothing is on record to the effect that during this 15 years of agency, any adverse is found against the petitioner and/or any show cause notice and/or notice came to be issued and/or any other things found against the petitioner by which it can be presumed that the act of the petitioner was prejudicial to the interest of the corporation and/or policy holders. There is no dispute with regard to the proposition of law laid down by the Hon'ble Supreme Court in the decision cited by the learned advocate appearing on behalf of the LIC to the effect that once the fraud is detected and the dishonest intention is found and the charges are held to be proved against the delinquent, normally the court should not interfere with the order of punishment unless it is found to be shockingly disproportionate. However, as stated above by mere non mentioning of the fact that his brother-in-law was serving in the LIC and coupled with the fact that such a ban was provided only by internal circular and not by any statutory rules and regulations, such a non-disclosure by itself cannot be

said that the petitioner has committed fraud and/or acted in a manner prejudicial to the corporation and/or its policy holders. Under the circumstances, so far as the punishment of forfeiture of renewal commission payable to the petitioner (of 15 years) can be said to be disproportionate to the charge levelled against the petitioner. It is required to be noted that the only allegation against the petitioner is with regard to non-disclosure of the fact that his brother-in-law was serving in the LIC, in the form. Nothing further has been alleged against the petitioner. Nothing adverse other than the aforesaid fact is found against the petitioner. Under the circumstances, the punishment of forfeiture of renewal commission payable to the petitioner is disproportionate and not warranted in the facts of the present case. Under the circumstances the present Special Civil Application to that effect is required to be allowed by quashing and setting aside the order passed by the respondents forfeiting the renewal commission payable to the petitioner and so far as the termination of the agency is concerned, even otherwise it is the case of the petitioner that his agency stood terminated with effect from March, 1997 and therefore, so far as the termination of agency is concerned, no further order is required to be passed and it can be said to have been confirmed to

that extent.

9. For the reasons as stated above, the petition partly succeeds. The order passed by the respondents terminating the agency of the petitioner is hereby confirmed. However, the order with regard to forfeiture of renewal commission payable to the petitioner is hereby quashed and set aside. The respondents are directed to pay all consequential benefits from the above order to the petitioner accordingly. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

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